

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE  
AGENCY, AS CONSERVATOR FOR  
THE FEDERAL NATIONAL  
MORTGAGE ASSOCIATION  
AND THE FEDERAL HOME LOAN  
MORTGAGE CORPORATION,

Plaintiff,

-v-

UBS AMERICAS, INC., *et al.*

Defendants.

**Case No. 11 CIV. 5201 (DLC)**

**DEFENDANTS' STATUS REPORT  
ON OUTSTANDING DISCOVERY  
ISSUES**

Other Cases Brought By This Plaintiff:

11 Civ. 6188 (DLC)  
11 Civ. 6189 (DLC)  
11 Civ. 6190 (DLC)  
11 Civ. 6192 (DLC)  
11 Civ. 6193 (DLC)  
11 Civ. 6195 (DLC)  
11 Civ. 6196 (DLC)  
11 Civ. 6198 (DLC)  
11 Civ. 6200 (DLC)  
11 Civ. 6201 (DLC)  
11 Civ. 6202 (DLC)  
11 Civ. 6203 (DLC)  
11 Civ. 6739 (DLC)  
11 Civ. 7010 (DLC)

*(Counsel listed on signature pages)*

In anticipation of the conference on February 14, 2013, in which the Court may wish to address certain issues that remained undecided following the February 7, 2013 conference, Defendants submit this Status Report on Outstanding Discovery Issues.

I. Status of Parties' Document Production

- a. As of February 13, 2013, the parties have produced approximately the following quantity of documents:

	<b>Number of Non-Loan File Documents</b>	<b>Number of Pages of Non-Loan File Documents</b>
Defendants	11,322,629	129,640,294
FHFA	1,466,905	15,469,447

- b. As of February 13, 2013, no party has notified any other that its document production is complete. On January 25, 2013, Plaintiff stated that its document production is "substantially complete," but Plaintiff has declined to state the volume of outstanding production, or identify an anticipated completion date. Certain defendants have notified Plaintiff that their productions are "substantially complete."
- c. As set out below and as will be more fully described in Defendants' submissions, Plaintiff has not produced certain particularly important categories of documents, and has declined to state when or whether they will be produced. Some of these documents remain the subject of further discussion among the parties. Unresolved disputes over those documents are being brought to the Court's attention promptly when the parties' discussions conclude.

II. Disputes on Which Defendants Seek Relief

- a. The destruction of pre-September 2007 emails at Freddie Mac. *See, e.g.*, Letter dated February 13, 2013 from Robert Fumerton to Judge Cote; Letter dated February 6, 2013 from Penny Shane to Judge Cote.
- b. Plaintiff's responses to Defendants' Interrogatory No. 1, seeking identification of certain GSE personnel on a securitization by securitization basis. *See, e.g.*, Letter dated February 5, 2013 from Robert Kopecky to Judge Cote; Letter dated February 6, 2013 from Penny Shane to Judge Cote; Letter dated February 6, 2013 from Kanchana Leung to Judge Cote.
- c. Plaintiff's refusal to produce documents reflecting GSEs' analyses of the causes of their losses. *See, e.g.*, Letter dated February 4, 2013 from Richard Klapper to Judge Cote; Letter dated February 6, 2013 from Philippe Selendy to Judge Cote.
- d. Plaintiff's refusal to produce documents sufficient to show GSE defect, pull-through and waiver rates. *See, e.g.*, Letter dated February 4, 2013 from Richard Klapper to Judge Cote; Letter dated February 6, 2013 from Philippe Selendy to Judge Cote.
- e. Plaintiff's refusal to produce documents sufficient to show certain GSE due diligence policies. *See, e.g.*, Letter dated February 13, 2013 from Richard Klapper to Judge Cote.

- f. Plaintiff's refusal to produce reviews and assessments of due diligence providers. *See, e.g.*, Letter dated February 13, 2013 from Richard Klapper to Judge Cote.
- g. Plaintiff's refusal to complete the search for and production of third-party reports provided to Fannie Mae at the time of each Securitization. *See, e.g.*, Letter dated February 13, 2013 from Penny Shane to Judge Cote.
- h. Plaintiff's refusal to produce a witness to testify at all on certain topics within Defendants' 30(b)(6) Deposition Notice.

III. Disputes That Defendants Understand Plaintiff Will Raise

- a. Certain Defendants' responses to Plaintiff's requests for additional or newly compiled information about loans that Defendants subjected to review. *See, e.g.*, Letter dated February 12, 2013 from Richard Klapper to Judge Cote; Letter dated February 12, 2013 from Christine Chung to Judge Cote.

IV. Issues Raised by Agreement But Fully Resolved

- a. Schedule for certain interim disclosures regarding alleged underwriting defects in Tranche 1 and 2 cases. *See* Stipulations and Proposed Orders Regarding the Disclosure of Findings, Rebuttal Findings, and Alternative Sets in the Absence of Stipulations as to Loan Files and Applicable Guidelines, dated February 12, 2013.

V. Issues Raised by Agreement But Not Fully Resolved

- a. Expert discovery schedule for Tranche 3 and 4 cases. *See, e.g.*, Letter dated February 12, 2013 from David Woll to Judge Cote; Letter dated

February 12, 2013 from Philippe Selendy to Judge Cote; Letter dated

February 1, 2013 from David Woll to Judge Cote.

VI. Certain Issues About Which Defendants Continue to Confer But May Require

Guidance or Rulings in the Near Future

- a. Issues related to Rule 30(b)(6) depositions of the GSEs.
- b. Issues related to Plaintiff's production of certain documents, and potential privilege assertions.

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